

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM JOHN DAUGHTERY,

Plaintiff,

vs.

D. WILSON, S.D.P.D.; E. TAGABAN,
S.D.P.D.; DET. LEMUS, S.D.P.D.; SGT.
GRIFFIN, S.D.P.D.,

Defendants.

CASE NO. 08cv408-WQH-BLM

ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation of Magistrate Judge Barbara L. Major (ECF No. 173), recommending that the Court grant the Motion for Summary Judgment filed by all Defendants (ECF No. 154), and grant the Motion to Order Clerk to Return Exhibits filed by Plaintiff (ECF No. 160).

BACKGROUND

On October 23, 2009, Plaintiff William John Daughtery, a state prisoner proceeding pro se, filed the Second Amended Complaint, which is the operative pleading in this action. (ECF No. 125). Plaintiff alleges that the Defendants, four San Diego Police Department employees, failed to provide care for serious medical needs on March 9, 2006, the day of his arrest, in violation of the Fourteenth Amendment and 42 U.S.C. § 1983.

On January 7, 2011, Defendants filed the Motion for Summary Judgment. (ECF No. 154).

On January 24, 2011, Plaintiff filed an opposition to the Motion for Summary

1 Judgment. (ECF No. 159). On the same day, Plaintiff filed a Motion to Order Clerk to Return
2 Exhibits, requesting that certain exhibits submitted by Plaintiff with his opposition “be
3 returned after decision on Defendants’ motion ..., because Plaintiff has no other copies.” (ECF
4 No. 160).

5 On February 7, 2011, Defendants filed a reply brief. (ECF No. 167).

6 On May 9, 2011, the Magistrate Judge issued a notice pursuant to *Klinge v.*
7 *Eikenberry*, 849 F.2d 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998)
8 (en banc), reminding Plaintiff of the requirements for opposing a summary judgment motion
9 and providing him with an additional opportunity to oppose Defendants’ Motion for Summary
10 Judgment. (ECF No. 170).

11 On May 25, 2011, Plaintiff filed an affidavit and declaration in opposition to
12 Defendants’ Motion for Summary Judgment. (ECF No. 171).

13 On June 1, 2011, Defendants filed a sur-reply brief. (ECF No. 172).

14 On July 1, 2011, the Magistrate Judge issued the Report and Recommendation. (ECF
15 No. 173). The Report and Recommendation states:

16 Plaintiff has not established that he suffered a serious medical injury or had a
17 serious medical need or that any Defendant denied him medical treatment,
18 unreasonably delayed any medical treatment, or ignored or interfered with a
19 doctor’s orders to provide medical treatment. Rather, Defendants have
20 established that they promptly and repeatedly brought Plaintiff before the
21 appropriate medical personnel. Thus, no question of material fact exists as to
22 whether Defendants were deliberately indifferent to Plaintiff’s serious medical
23 need and no reasonable jury could find for Plaintiff on this issue. Accordingly,
24 the Court recommends that Defendants’ motion for summary judgment be
25 granted as to all Defendants.

26 *Id.* at 25 (emphasis omitted). The Report and Recommendation also recommends that the
27 Motion for Summary Judgment be granted because Defendants are protected by qualified
28 immunity. The Report and Recommendation recommends that Plaintiff’s unopposed Motion
to Order Clerk to Return Exhibits be granted. The Report and Recommendation states that
“any written objections to this Report must be filed with the Court and served on all parties no
later than **July 22, 2011.**” *Id.* at 28 (emphasis in original).

The docket reflects that no objections to the Report and Recommendation have been
filed.

RULING OF THE COURT


The duties of the district court in connection with a Report and Recommendation of a Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When a party objects to a Report and Recommendation, “[a] judge of the [district] court shall make a de novo determination of those portions of the [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). When no objections are filed, the district court need not review the Report and Recommendation de novo. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1).

Neither party objected to the Report and Recommendation, and this Court has reviewed the Report and Recommendation in its entirety. The Report and Recommendation correctly sets forth the standard of review for motions for summary judgment. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The Report and Recommendation correctly sets forth the applicable legal standards related to claims that an official violated a pretrial detainee’s rights by acting with deliberate indifference to the detainee’s serious medical needs. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976); *Clouthier v. Cnty. of Contra Costa*, 591 F.3d 1232, 1241-43 (9th Cir. 2010); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). The Report and Recommendation correctly finds that Defendants met their burden of demonstrating the absence of a genuine issue of material fact as Plaintiff’s claim for deliberate indifference to serious medical needs. The Report and Recommendation also correctly finds that Plaintiff has failed to produce evidence demonstrating that a genuine issue of material fact exists as to Plaintiff’s claim. The Court concludes that the Report and Recommendation should be adopted in its entirety.

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 173) is ADOPTED in its entirety; the Motion for Summary Judgment (ECF No. 154) is GRANTED; and the Motion to Order Clerk to Return Exhibits (ECF No. 160) is GRANTED. The Clerk

1 of the Court shall return to Plaintiff the exhibits filed with Plaintiff's opposition to the Motion
2 for Summary Judgment (ECF Nos. 159-1 through 159-6). The Clerk of the Court shall enter
3 judgment for Defendants and close the case.

4 DATED: August 19, 2011

5 
6 **WILLIAM Q. HAYES**
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28